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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,163	04/12/2007	Franciscus J Groenhof	011801-0048-999	2012
20583	7590	04/15/2011	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			HOLLOMAN, NANNETTE	
			ART UNIT	PAPER NUMBER
			1612	
			MAIL DATE	DELIVERY MODE
			04/15/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,163	<b>Applicant(s)</b> GROENHOF, FRANCISCUS J	
	<b>Examiner</b> NANNETTE HOLLOMAN	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,9-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 16-18 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6 and 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicants' arguments, filed January 31, 2011, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

#### ***Claim Rejections - 35 USC § 103***

Claims 1-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Dederen et al. (US Patent Pub. No. 2002/0065328). This rejection is maintained.

Claims 5, 7, and 8 are cancelled.

#### **Applicant's Arguments**

Applicant argues Dederen neither teaches nor suggests combining the claimed particular components in the specified ratios. Applicant also argues the rejection fails to provide the necessary motivation for one skilled in the art to select and then combine the particular surfactants in Dederen in the manner suggested in the rejection. Applicant further argues the pending rejection is merely an exercise of picking and choosing components, using the pending application as a guide, and is nothing more

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than an impermissible hindsight reconstruction. Applicant's arguments have been fully considered but they are not persuasive.

### **Examiner's Response**

As previously asserted, Dederen et al. disclose non-ionic emulsifiers that meet the limitation of "at least one polyoxyalkylene branched surfactant", i.e. EM 15, Arlasolve ® 200- iso-cetyl alcohol 20 ethoxylate, and "surfactant capable of forming liquid crystals in water" (instant claims 9-14), i.e. EM 13, Arlatone ® 2121-mixture of sucrose cocoate and sorbitan stearate (p.9, para. [0106] and [0104]); which are shown in the compositions of TABLES 23b and 24 at concentrations of 0.4 and 0.9% respectively. Generally, it is *prima facie* obvious to combine two compositions, each of which is taught by the prior art to be useful for same purpose, in order to form a third composition to be used for the very same purpose. The idea for combining them flows logically from their having been individually taught in the prior art. See MPEP 2144.06. Therefore, it would have been obvious to have combined the emulsion compositions of TABLE 23b with the emulsion composition of TABLE 24 to form third composition for the very same purpose, i.e. stable emulsions as taught by Dederen. In regard to the ratio, the concentrations as 0.4 and 0.9% as discussed above, would meet the limitation of the ratio of the at least one polyoxyalkylene branched non-ionic surfactant to the at least one surfactant capable of forming liquid crystals in water is from 0.05 to 20:1, where 0.05 is being interpreted to be the ratio of 1:20. Examiner asserts, hindsight reasoning was not used since the reference suggests using the Arlatone ® 2121 and

Arlasolve ® 200 surfactants therefore providing the motivation to use them in a single emulsion composition.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANNETTE HOLLOMAN whose telephone number is (571)270-5231. The examiner can normally be reached on Mon-Fri 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. H./  
Examiner, Art Unit 1612

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612